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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/358,280	07/21/1999	STEVEN M. UTTER	MISTY-52064	1354

7590 07/16/2002

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EXAMINER

KIM, CHRISTOPHER S

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 07/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/358,280

Applicant(s)

UTTER, STEVEN M.

Examiner

Christopher S. Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5,7-12 and 15-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5,7-12 and 15-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 23 October 2000 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Amendment filed April 8, 2002 is acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "means for pressurizing the container removably mounted to said inlet of said container" recited in claim 11; the "degree of restriction" recited in claim 18; the "aperture" recited in claim 21 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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5. Claims 18-21 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 18 recites "for controlling the degree of restriction of fluid flow." The specification as originally filed fails to teach a valve for controlling the degree of restriction. Additionally, the specification as originally filed does not provide support for the recitation of "creating an evaporative cooling effect without the need for constant manipulation to direct the at least one spray nozzle" in claim 19. Finally, claim 21 recites "an aperture size small enough to emit fluid as particles having a size characteristic of an evaporative mist." The specification as originally filed fails to teach any particular "size" aperture.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 19 recites "the individual" in line 6. It is uncertain whether it is in reference to the "individual" recited in claim 18, line 1 or the "individual" recited in claim 19, line 5.

Claim 20 recites the limitation "the evaporative cooling apparatus" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation "belt-like fastener". The recitation "-like" renders the claim indefinite since the metes and bounds of the claim cannot be determined.

Claim Rejections - 35 USC § 102

8. Claims 18, 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Cushing (4,911,339).

Cushing discloses an apparatus comprising: a pressurizable container 16; a manual pump 40; a spray nozzle 20; a valve 46; a first conduit 72; a second conduit 18, 51; a clip 24. The intended use recitation of the clip “for securing the second conduit to an article of clothing on an individual to direct the mist from the at least one spray nozzle towards the individual creating an evaporative cooling effect without the need for constant manipulation to direct the at least one spray nozzle” does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

9. Claims 5, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing (4,911,339) in view of Rosenberg (4,960,419).

With respect to claims 5 and 8, Cushing discloses an apparatus comprising: a pressurizable container 16; a first water conduit 72; means 40 for pressurizing the container; a second water conduit 18, 51; a spray nozzle 20; a clip 24; a restrictive valve 46; and a means for sealing 70. The valve of Cushing inherently has an open position and a closed position. Cushing differs from what is being claimed in the alligator clip. The clip of Cushing is a C-shaped clip. Rosenberg discloses, in column 6, lines 3-6, a conventional alligator clip 235 for securing a tube to a convenient point. It would have

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been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the clip of Cushing with the alligator clip of Rosenberg for attachment to convenient places.

With respect to claim 10, Cushing in view of Rosenberg discloses the limitations of the claimed invention with the exception of ice. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have added ice to the container of Cushing in view of Rosenberg to dispense cold water.

10. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing (4,911,339) in view of Rosenberg (4,960,419) as applied to claim 5 above, and further in view of Shurnick et al. (4,852,781).

Cushing in view of Rosenberg differs from what is claimed in the means secured to the misting apparatus for attaching the misting apparatus to a person's waist.

Shurnick et al. discloses a means 27 for securing a bottle to a part of a person's body (waist shown in figure 1). It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced cage 30 of Cushing with the means 27 of Shurnick et al. to attach the device of Cushing to a runner.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing (4,911,339) in view of Rosenberg (4,960,419) as applied to claim 5 above, and further in view of Norman (842,689).

Cushing in view of Rosenberg discloses the limitations of the claimed invention with the exception of the manual piston type pump. Norman discloses a piston pump 7, 11, 12, 13, 17. It would have been obvious to a person having ordinary skill in the art at

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the time of the invention to have replaced the bellows pump of Cushing with the piston pump of Norman to provide faster compression.

12. Claims 11, 12 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing (4,911,339) in view of Rosenberg (4,960,419), Shurnick et al. (4,852,781) and Roueche et al. (5,186,391).

With respect to claims 11, 12, 15 and 16,

Cushing discloses an apparatus comprising: a pressurizable container 16; a first water conduit 72; means 40 for pressurizing the container; a second water conduit 18, 51; a spray nozzle 20; a clip 24; a restrictive valve 46; and a means for sealing 70. The valve of Cushing inherently has an open position and a closed position. Cushing differs from what is being claimed in: the means for pressurizing the container mounted to the inlet; the means for securing the container to the person; and the alligator clip.

Roueche et al. discloses, in figure 13, a piston pump mounted to an inlet cap 118. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the bellows pump of Cushing with the piston pump of Roueche et al. to provide faster compression.

Shurnick et al. discloses a means 27 for securing a bottle to a part of a person's body (shown as a belt 27 around runner's waist 31 in figure 1). It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced cage 30 of Cushing with the means 27 of Shurnick et al. to attach the device of Cushing to a runner.

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Rosenberg discloses, in column 6, lines 3-6, a conventional alligator clip 235 for securing a tube to a convenient point. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the clip of Cushing with the alligator clip of Rosenberg for attachment to convenient places.

With respect to claim 17,

Cushing in view of Rosenberg, Shurnick et al. and Roueche et al. discloses the limitations of the claimed invention with the exception of ice. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have added ice to the container of Cushing in view of Rosenberg, Shurnick et al. and Roueche et al. to dispense cold water.

13. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing Cushing (4,911,339) in view of Shurnick et al. (4,852,781).

Cushing differs from what is claimed in the means secured to the misting apparatus for attaching the misting apparatus to a person's waist. Shurnick et al. discloses a belt-like fastener 27 for securing a bottle to a part of a person's body (waist shown in figure 1). It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced cage 30 of Cushing with the belt-like fastener 27 of Shurnick et al. to attach the device of Cushing to a runner.

Response to Arguments

14. Applicant's arguments filed April 8, 2002 have been fully considered but they are not persuasive.

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In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Rosenberg discloses, in column 6, lines 3-6, a conventional alligator clip 235 for securing a tube to a convenient point. Shurnick et al. discloses, in column 3, lines 17-18, a means 27 for securing a bottle to a part of a person's body (waist shown in figure 1). It is in the knowledge generally available to one of ordinary skill in the art that the piston pump of Norman provides a faster compression than the bellows pump of Cushing because of the larger stroke provided by the barrel 7 and stem 11. It is in the knowledge generally available to one of ordinary skill in the art that the piston pump of Roueche et al. provides a faster compression than the bellows pump of Cushing because of the larger stroke provided by the barrel 30 and stem 54.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

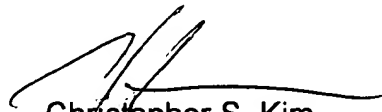
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (703) 308-8336. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry C. Yuen can be reached on (703) 308-1946. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7766 for regular communications and (703) 308-7766 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Christopher S. Kim
Examiner
Art Unit 3752

CK
July 15, 2002